

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

03-CR-6095L

v.

ROBERT W. MC CULLOUGH,

Defendant.

By motion filed September 8, 2010 (Dkt. #33), defendant Robert McCullough moved to reduce his term of imprisonment pursuant to 18 U.S.C. § 3582(c)(2). The motion is in all respects denied.


This defendant previously moved for a reduction in the sentence based on the reduction in the United States Sentencing Guidelines concerning cocaine base. That motion was denied by the Court on April 8, 2008.

McCullough brings this present motion and relies on recent changes in the law relative to sentencing. However, the Sentencing Guidelines have not yet been modified, and it appears that the new statute will not be applied retroactively. Therefore, for conduct occurring prior to enactment of the new statute, prior sentencing rules and statutory provisions apply. Therefore, there is no basis to grant the present motion.

CONCLUSION

Defendant's motion for modification of the sentence pursuant to 18 U.S.C. § 3582(c)(2) (Dkt. #33) is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 10, 2010.